LBCN DEVELOPMENT SDN BHD & ANOR A

v.

PENGARAH TANAH DAN GALIAN SELANGOR & ORS B

COURT OF APPEAL, PUTRAJAYA
ALIZATUL KHAIR OSMAN JCA
HAMID SULTAN ABU BACKER JCA
ABANG ISKANDAR JCA
[CIVIL APPEAL NO: W-01(IM)(NCVC)-371-10-2013] C
17 FEBRUARY 2014

TORT: *Misfeasance in public office - Cause of action - Land acquisition - Whether public officer's act in acquiring land amounted to abuse of power - Whether misfeasance in public office available only in cases relating to personal misconduct - Whether public officer was mouth piece of State Authority - Whether acquisition done by State Authority - Whether action scandalous, frivolous and vexatious and an abuse of process of court* D

The appellants had been alienated land by the third defendant (Pentadbir Tanah Kuala Selangor) for a development project which subsequently came to a halt. In consequence, the third defendant proceeded with acquisition of the land under the Land Acquisition Act 1960 ('Act') with respective awards of compensation granted to the appellants. The appellants were not satisfied with the acquisition process and/or the awards and challenged it by way of judicial proceedings based on a cause of action in 'tort of misfeasance in public office' against seven defendants, *ie,* Pengarah Tanah dan Galian Selangor (first defendant), Pendaftar Hakmilik Negeri Selangor (second defendant), the third defendant, Menteri Besar Selangor (fourth defendant), Tan Sri Dato' Abdul Khalid bin Ibrahim ('fifth defendant'), Kerajaan Negeri Selangor ('sixth defendant') and Menteri Besar Selangor (Pemerbadanan) ('seventh defendant'). The appellants' writ and statement of claim was struck out by the High Court and hence, this appeal. It was the appellants' contention that it was only subsequent to the acquisition had they realised that the land acquired was alienated to the seventh defendant, a company owned by the sixth defendant. The appellants averred that it was a 'land grab' policy by the sixth defendant helmed by the fifth defendant and it was E F G H I

done without abiding to the strict provision of law *ie*, s. 3 of the Act. The objections of the respondents were premised principally on *res judicata* and multiplicity of proceedings.

Held (dismissing appeal with costs)

Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) The cause of action relating to misfeasance in public office is available only in cases relating to 'personal misconduct'. In the instant case, the 'sting' was on the fifth defendant in his personal capacity. However, the scheme of the Act does not give any powers in a personal capacity in the manner complained of against the fifth defendant. Under s. 3, acquisition is done by the 'State Authority'. The fifth defendant, at the most was a mouth piece for the 'State Authority' or its organ. There were also further restrictions on the cause of action of 'misfeasance in public office' under ss. 5 and 6 of the Government Proceedings Act 1956 which provides that if the act of the public officer cannot give rise to a private action against the purported public officer, then the government will not be liable. Therefore, based on the facts and taking the objections by the respondents and its merits into consideration, the action was scandalous, frivolous and vexatious and was an abuse of the process of the court. (paras 13-15)

Bahasa Malaysia *Translation Of Headnotes*

Perayu-perayu telah diberimilik tanah oleh defendan ketiga (Pentadbir Tanah Kuala Selangor) bagi satu projek pembangunan yang kemudiannya terhenti. Oleh itu, defendan ketiga meneruskan dengan pengambilan tanah tersebut di bawah Akta Pengambilan Tanah 1960 ('Akta') dengan memberikan award pampasan yang sewajarnya kepada perayu-perayu. Perayu-perayu tidak berpuashati dengan proses pengambilan dan/atau pampasan tersebut dan mencabarnya melalui prosiding kehakiman berdasarkan kausa tindakan 'tort salah laku dalam perjawatan awam' terhadap tujuh defendan-defendan iaitu, Pengarah Tanah dan Galian Selangor (defendan pertama), Pendaftar Hakmilik Negeri Selangor (defendan kedua), defendan ketiga, Menteri Besar Selangor (defendan keempat), Tan Sri Dato' Abdul Khalid bin Ibrahim ('defendan kelima'), Kerajaan Negeri Selangor ('defendan keenam') and

Menteri Besar Selangor (Pemerbadanan) ('defendan ketujuh'). Writ dan penyata tuntutan perayu-perayu dibatalkan oleh Mahkamah Tinggi, dan dengan itu, rayuan ini. Hujahan perayu-perayu adalah bahawa hanya selepas pengambilan tersebut mereka menyedari bahawa tanah yang diambil itu telah diberikan kepada defendan ketujuh, sebuah syarikat yang dimiliki oleh defendan keenam. Perayu-perayu menghujahkan bahawa ia adalah polisi 'rampasan tanah' oleh defendan keenam yang diterajui oleh defendan kelima dan ia dibuat tanpa pematuhan kepada peruntukan ketat undang-undang iaitu s. 3 Akta. Bantahan oleh responden-responden pada asasnya berdasarkan kepada *res judicata* dan prosiding berganda.

Diputuskan (menolak rayuan dengan kos)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Kausa tindakan berkaitan dengan salah laku dalam perjawatan awam hanya terdapat dalam kes-kes yang berkaitan dengan 'salah laku peribadi'. Dalam kes ini, 'aduan' adalah terhadap defendan kelima dalam kapasiti peribadinya. Walau bagaimanapun, skema Akta tidak memberikan apa-apa kuasa dalam kapasiti peribadi dalam cara yang diadukan terhadap defendan kelima. Di bawah s. 3, pengambilan dilakukan oleh 'Pihak Berkuasa Negeri'. Defendan kelima adalah wakil suara kepada "Pihak Berkuasa Negeri' atau bahagiannya. Terdapat sekatan lanjut terhadap kausa tindakan 'salah laku dalam perjawatan awam' di bawah ss. 5 dan 6 Akta Prosiding Kerajaan 1956 yang memperuntukkan bahawa jika tindakan penjawat awam tidak boleh menjurus kepada tindakan persendirian terhadap penjawat awam tersebut, maka kerajaan tidak akan bertanggungan. Oleh itu, berdasarkan fakta dan mengambil kira bantahan responden-responden dan meritnya, tindakan tersebut adalah mengaibkan, remeh dan menyusahkan dan merupakan satu penyalahgunaan proses mahkamah.

Case(s) referred to:
Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***
Common Cause v. Union of India [1999] 6 SCC 667 ***(refd)***
Three Rivers District Council v. Bank of England (No 3) [1996] 3 All ER 558 ***(refd)***

Legislation referred to:
Government Proceedings Act 1956, ss. 5, 6
Land Acquisition Act 1960, s. 3

For the appellants - B Thangaraj (Azad Bashir with him); M/s Thangaraj & Assoc
For the 1st-6th respondents - Ahmad Fuad Othman; State Legal Advisor
For the 7th respondent - Kamaruzaman M Arif (Sofiah Omar & Nurliza Shafien with him); M/s Kamaruzaman Arif, Amran & Chong

[Appeal from High Court, Kuala Lumpur; Civil Suit No: 21NCVC-24-02-2013]

Reported by S Barathi

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellants' appeal against the decision of the learned High Court Judge for striking out the writ and statement of claim based on a cause of action in 'tort of misfeasance in public office'. It came up for hearing on 12 December 2013 and on the same day upon hearing, the appeal was dismissed. This is our judgment.

[2] It is essential to note that learned counsel for the appellants had conceded that the plaintiff's cause of action is based on 'misfeasance in public office' and not on illegality even though illegality is a limb in misfeasance proceeding.

[3] The appellant had filed a lengthy statement of claim running to 118 pages and equally lengthy is the written submission running to 117 pages. The real issue is whether the appellant has a sustainable cause of action, in misfeasance in public office, taking into consideration the objections of the respondents'.

Brief Facts

[4] The appellants have brought the action against the seven defendants namely: (i) 1st defendant – Pengarah Tanah dan Galian Selangor; (ii) 2nd defendant – Pendaftar Hakmilik Negeri Selangor; (iii) 3rd defendant – Pentadbir Tanah Kuala Selangor; (iv) 4th defendant – Menteri Besar Negeri Selangor; (v) 5th defendant – Tan Sri Dato' Abdul Khalid bin Ibrahim; (vi) 6th defendant – Kerajaan Negeri Selangor; (vii) 7th defendant – Menteri Besar Selangor (Pemerbadanan).

[5] The appellants have been alienated land by the 3rd defendant for a development project in Ijok Selangor. The state authorities had agreed with the development proposal with conditions. The appellants had started development in 2000. The project came to a halt in 2008. In consequence, the 3rd defendant in 2009 proceeded with acquisition of the land and the said land was acquired under the Land Acquisition Act 1960, with respective awards as compensation granted to the appellants. The appellants were not satisfied with the acquisition process and/or the awards and have proceeded to challenge by way of judicial proceedings and is now a subject of appeal to the Court of Appeal. Two of the judgments of Justice Vernon Ong dated 22 February 2013 and 24 July 2013 may be relevant to understand the factual matrix of the case and the objections of the respondents.

[6] The principal objections of the respondents were premised on *res judicata* and multiplicity of proceedings. And the assertion that the complaint of the appellants must be ventilated by judicial review proceedings, etc. and also the fact that the appellants' action is time barred. In addition the respondents also complain that ss. 5 and 6 of the Government Proceedings Act 1956 ('GPA 1956') have not been met and also the fact that compensation had already been paid to the appellants and in consequence the present action amount to unjust enrichment.

[7] It was the contention of the appellants that it was only subsequent to the acquisition that they realised that the land acquired was alienated to the 7th defendant, a company owned by the 6th defendant. They averred it was a 'land grab' policy by the 6th defendant helmed by the 5th defendant, and it was done without abiding to the strict provision of law ie, s. 3 of the Land Acquisition Act 1960. The said section reads as follows:

Acquisition of land

3(1) The State Authority may acquire any land which is needed:

(a) for any public purpose;

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

A (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

(2) An application for the acquisition of any land under paragraph (1)(b) or (c) shall be made in writing to the Land Administrator B in the form as prescribed in the Rules made under this Act.

(3) Any application made under paragraph (1)(b) or (c) shall be accompanied by:

C (a) the project proposal;

(b) the layout and land acquisition plan;

(c) the preliminary Government valuation report of the land to be acquired; and

D (d) such fee and deposit as may be prescribed in the Rules made under this Act:

Provided that the Sate Authority may grant partial or total exemption from the payment of any fee to any Federal or State corporation expressly empowered to E hold land under any written law and where the acquisition is for the purpose of public utility.

(4) Subject to subsection (6), the Land Administrator shall transmit the application and the accompanying documents to the State Economic Planning Unit or, in the case of an application F made in the Federal Territory of Kuala Lumpur, to the Committee if he is satisfied that they are in order.

(5) The Land Administrator may reject any application which does not comply with the requirements in subsection (3).

G (6) Where in respect of any land applied for under subsection (2) there is a development approval granted to the registered proprietor and the acquisition is not for the purpose of public utility, the State Authority shall not consider the application, and in every such case the Land Administrator shall reject the H application.

[8] On the issue of 'land grab' the respondents were quick to 'point out' to us that in consequence of the appellants' failure to develop the land according to the time frame the land had to be I acquired for 'public good' and the development project continued through the 7th defendant. The respondents assert that it was a *bona fide* exercise for public good.

[9] Learned counsel for the appellants has summarised the cause of action as follows: A

> In summary, the cause of action as pleaded by the appellants against the respondents in their Statement of Claim are as follows:
>
> (a) Misfeasance in public office; B
>
> (b) Declaratory reliefs to declare the actions taken by the respondents are contrary to the provisions of the relevant statutes and therefore the actions taken are illegal;
>
> (c) Declaratory reliefs to declare the actions taken by the respondents which are illegal and tainted with *mala fide* and therefore the actions taken are null and void and of no legal effect; C
>
> (d) The 6th respondent (state Government of Selangor) is vicariously liable for the acts of the 4th and 5th respondents (Menteri Besar Negeri Selangor and Tan Sri Dato' Abdul Khalid bin Ibrahim, respectively); D
>
> (e) Claim for damages.

And the appellants' attempted to demonstrate the purported blatant abuse of power by the 5th respondent to anchor the complaint in misfeasance proceedings. E

[10] Learned counsel on this issue, *inter alia*, submitted as follows: F

> What amounts to a tort of misfeasance in public office is clearly explained in the text book *"The Law of Tort"*, 2nd edn, LexisNexis Butterworths at p. 926 para. 17.46 which states:
>
> > Misfeasance in public office consists of a purported exercise of some power or authority by a public officer otherwise than in honest attempt to perform the functions of his office, whereby loss is caused to a claimant. There are two limbs to the tort. The first covers situations where the exercise of a public power is specifically intended to injure the claimant (this is the 'targeted malice' limb). The second covers situations where a public officer acts in the knowledge that he has no power to do the act complained and that the act will probably cause loss to the claimant (that is the' illegality limb'). In both types of case the respondent can be said to have acted in bad faith. The targeted malice limb involves bad faith in the sense of G H I

A acting for an improper or ulterior motive. The illegality limb involves bad faith in that the respondent does not have an honest belief that his act is lawful. The essence of the cause of action as a whole is therefore a deliberate and dishonest wrongful abuse of the powers given to a public officer.

B

The background facts relating to the development of the tort of misfeasance in public office is explained at page 926-927 paragraph 17.47 of the aforesaid textbook:

C Although misfeasance has been described as 'well-established', the popularity of the cause of action has ebbed and flowed over the years since its inception. The origins of the tort are generally traced back to *Ashby v. White*, where the claimant brought an action on the case against a returning officer who had unlawfully denied him the D opportunity to cast his vote at a Parliamentary election. The majority in the Kings' Bench held that the claimant's action must fail, but a strong dissent by Holt CJ was upheld by the House of Lords and the claimant was awarded damages. In *Ashby v. White* itself the requirement of malice was not emphasized, but later cases confirmed that bad faith E on the respondent's part was a central element of the emerging tort. By the early 20th century, the cause of action appears almost to have died out, a decline exemplified by *Davis v. Bromley Corpn*, where a Court of Appeal oblivious to the earlier authorities held that malicious F refusal by a local authority to sanction building works did not give rise to a private law right of action for damages. The revival of misfeasance in public office began with two Commonwealth cases decided in 1959, *Farrington v. Thomson* and *Roncarelli v. Duplessis*. Soon after, the Privy Council paved the way for the revival of the tort in English G law by holding that *Davis v. Bromley Corpn* did not rule out the possibility of an award of damages where a local authority was accused of maliciously refusing to issue a cinema license. However, as late as 1979 misfeasance was described by one commentator as 'virtually an academic H curiosity', and it was only the mid-1980's, with the decision of the Court of Appeal in *Bourgoin SA v. Ministry of Agriculture* that the true renaissance of the cause of action began. The roots of this renaissance lie in the upsurge in litigation against public authorities over the last two decades. Although negligence is still by far the most popular I cause of action in these circumstances, a plea of

> misfeasance in public office may prove fruitful where the restrictions placed on negligence recovery are likely to bite. The growing reliance on the cause of action for misfeasance culminated in a comprehensive review of the tort by the House of Lords in *Three Rivers District Council v. Bank of England (No 3)*.

[11] However, learned counsel was candid in saying that similar provision like ss. 5 and 6 of the Government Proceedings Act 1956 (GPA 1956) which limits the scope of misfeasance proceedings in Malaysia is not available in England.

[12] Learned counsel for the respondents had filed a meticulous submission to justify why the appeal should be dismissed. And the said submission has merits. *Inter alia* learned counsel said:

(i) The appellant has no cause of action as pleaded as the Menteri Besar or the Land Administrator cannot be the decision maker which is vested by law on the Ruler acting on advice from the State Executive Council (see *Hamdan bin Johan & Ors v. FELCRA Bhd & Ors* [2010] 3 CLJ 474).

(ii) The tort of 'Misfeasance in Public Office' has not been made out in the affidavits and is based on suspicion. In the case of *Ng Kim Moi (P) & Ors v. Pentadbir Tanah Daerah Seremban, Negeri Sembilan* [2004] 3 MLJ 301, where the Court of Appeal refer to the 5th Edition of *de Smith, Woolf and Jowell's Judicial Review of Administrative Action* sets out the ingredients of the tort as follows:

> A public authority or person holding a public office may be liable for the tort of misfeasance in public office where:
>
> (a) There is an exercise or non-exercise of public power, whether common law, statutory or some other source;
>
> (b) Which is either, affected by the malice towards the plaintiff or the decision maker knows that it is unlawful; and
>
> (c) The plaintiff is in consequence deprived of a benefit or suffers other loss.

[13] We have read the appeal record and the submissions of the parties in detail. We are grateful for the comprehensive submission of learned counsel. After carefully considering the submission of

learned counsel for the appellant, we are of the considered view that the appeal must be dismissed. Our reasons *inter alia* are as follows:

(i) In the instant case the 'sting' is on the 5th defendant who is a Menteri Besar in his personal capacity. The scheme of the Land Acquisition Act 1960 does not give any powers in a personal capacity in the manner complained of against the 5th defendant. Under s. 3, acquisition is done by the 'State Authority'. The 5th defendant at the most is a mouth piece for the 'State Authority' or its organ.

(ii) The Indian Supreme Court has considered the jurisprudence relating to misfeasance in public office in several cases and had held the cause of action is available only in cases relating to 'personal misconduct'. In *Common Cause v. Union of India* [1999] 6 SCC 667 on a review petition on its own decision the Supreme Court of India had considered the English case of *Three Rivers District Council v. Bank of England (No. 3)* [1996] 3 All ER 558, where it was held:

> (1) The tort of misfeasance in public office is concerned with a deliberate and dishonest wrongful abuse of the powers given to a public officer. It is not to be equated with torts based on an intention to injure, although, as suggested by the majority in *Northern Territory v. Mengel* [1995] 69 ALJR 527, it has some similarities to them.
>
> (2) Malice, in the sense of an intention to injure the plaintiff or a person is a class of which the plaintiff is a member, and knowledge by the officer both that he has no power to do the act complained of and that the act will probably injure the plaintiff or a person in a class of which the plaintiff is a member are alternative, nor cumulative, ingredients of the tort. To act with such knowledge is to act in a sufficient sense maliciously: see Mengel 69 ALJR 527 at 554 per Deane J.
>
> (3) For the purposes of the requirement that the officer knows that he has no power to do the act complained of, it is sufficient that the officer has actual knowledge that the act was unlawful or, in circumstances in which he believes or suspects that the act is beyond his powers, that he does not ascertain whether or not that is so or fails to take such steps as would be taken by an honest and reasonable man to ascertain the true position.

(4) For the purposes of the requirement that the officer knows that his act will probably injure the plaintiff or a person in a class of which the plaintiff is a member it is sufficient if the officer has actual knowledge that his act will probably damage the plaintiff or such a person or, in circumstance in which he believes or suspects that his act will probably damage the plaintiff or such a person, if he does not ascertain whether that is so or not or if he fails to make such inquiries as an honest and reasonable man would make as to the probability of such damage.

(5) If the states of mind in (3) and (4) do not amount to actual knowledge, they amount to recklessness which is sufficient to support liability under the second limb of the tort.

(6) Where a plaintiff establishes (i) that the defendant intended to injure the plaintiff or a person in a class of which the plaintiff is a member (limb one) or that the defendant knew that he had no power to do what he did and that the plaintiff or a person in a class of which the plaintiff is a member would probably suffer loss or damage (limb two) and (ii) that the plaintiff has suffered loss as a result, the plaintif has a sufficient right or interest to maintain an action for misfeasance in public office at common law. The plaintiff must of course also show that the defendant was a public officer or entity and that his loss was caused by the wrongful act.

(iii) The learned author of Ramaswamy Iyer's *"The Law of Torts"* 10th edn on misfeasance in public office had this to say:

In 1996, two ministers in the Central Government were held liable to pay exemplary damages for misuse of the discretionary power in distribution of largesse. In *Shiv Sagar Tiwari v. Union of India* [1996] 6 SCC 667, the minister was held liable to pay Rs 60 lakhs into the state exchequer for allotting shops or stalls as Minister for Housing and Urban Development to her relatives, employers and domestic servants out of the discretionary quota. Similarly, in *Common Cause v. Union of India* [1996] 6 SCC 593, the Minister of State for Petroleum and Natural Gas was indicted and required to pay Rs 50 lakhs as exemplary damages. However, the Supreme Court revised its opinion, in a review petition filed by the minister in the later case. The tort of misfeasance in public office, as explained in *Three Rivers District Council v. Bank of England (No 3)*

A [1996] 3 All ER 558, was concerned with a deliberate and dishonest wrongful abuse of the powers given to a public officer and the purpose of the tort was to provide compensation for those who suffered loss as a result of improper abuse of power. Referring to this, the Supreme Court stated that the tort of misfeasance in public office requires 'an identifiable plaintiff or claimant whose interest was damaged by the public officer maliciously or with the knowledge that the impugned action was likely to injure the interest of that person. It is the compensatory function of tort which is invoked by the plaintiff in a court and unless there is an identifiable plaintiff, there cannot be any order for compensation or damages to redress the loss caused to the plaintiff. The court quashed the allotments but held that mere allotment of petrol outlets would not constitute misfeasance. The court agreed that it was not an 'act of state' or part of the sovereign function of the state. The court also held that the 'public trust doctrine' explained in *MC Mehta v. Kamal Nath* [1997] 1 SCC 388, could not be invoked in fixing criminal liability. The remark was made in reference to the awarding of exemplary damages of Rs 50 lakhs as a punishment.

(iv) Unlike England or India we have further restrictions on the cause of action of 'misfeasance in public office'. Sections 5 and 6 of the GPA 1965 states:

Section 5

5. Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

Section 6

Limits of liability of the Government

6 (1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default

of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

(2) Any written law which negatives or limits the amount of the liability of any public officer in respect of any act, neglect or default committed by that officer shall, in the case of proceedings against the Government under section 5 in respect of such act, neglect or default of such officer, apply in relation to the Government as it would have applied in relation to such officer if the proceedings against the Government had been proceedings against such officer.

(3) No proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

(4) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless that officer was at the material time employed by the Government and paid in respect of his duties as an officer of the Government wholly out of the revenues of the Government, or any fund certified by the appropriate financial officer for the purposes of this subsection or was at the material time holding an office in respect of which the appropriate financial officer certifies that the holder thereof would normally be so paid.

(5) For the purposes of subsection (4) the expression "appropriate financial officer" means, in respect of the Federal Government, the Minister of Finance, and in respect of the Government of a State, the State Financial Officer, and, in the case of the States of Sabah and Sarawak, the State Minister responsible for finance.

[14] In essence if the act of the public officer cannot give rise to a private action against the purported public officer then the government will not be liable. For example, if a doctor in government service who is also the administrator for admission of patient, with malice refuses to admit an injured patient, who subsequently dies, not only may he be liable in negligence in his capacity but higher damages may be awarded if the cause of action is also framed in 'misfeasance in public office' requiring the government to be liable vicariously.

[15] From the facts of the instant case and taking into consideration the objections and its merits, it is difficult even to fathom how the cause of action can succeed except to say that the action is scandalous, frivolous, and vexatious and it is an abuse of process of court (see *Bandar Builders Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7).

[16] For the reasons stated above, the appeal is dismissed with costs of RM20,000 to the 1st – 6th respondents and RM20,000 to the 7th respondent to be paid by the appellants to the respondents.

We hereby order so.